

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 627—PATENTS, DATA, AND COPYRIGHTS

Subpart 627.2—Patents

Sec.

627.203 Patent indemnification of Government by contractor.

627.203-6 Clause for Government waiver of indemnity.

Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.

627.304 Procedures.

627.304-1 General.

627.304-5 Appeals.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

Subpart 627.2—Patents

627.203 Patent indemnification of Government by contractor.

627.203-6 Clause for Government waiver of indemnity.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.203-6.

Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.303. Determinations issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

627.304 Procedures.

627.304-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304-1. Questions regarding fact-finding procedures as specified in FAR 27.304-1(a)(4) shall be referred to A/OPE. Determinations issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

627.304-5 Appeals.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304-5. Questions regarding the appeals procedure as specified in FAR 27.304-5(b) shall be referred to A/OPE.

PART 628—BONDS AND INSURANCE

Subpart 628.1—Bonds

Sec.

628.101 Bid guarantees.

628.101-1 Policy on use.

628.106-6 Furnishing information.

Subpart 628.2—Sureties

628.203 Acceptability of individual surety.

628.203-7 Exclusion of individual sureties.

Subpart 628.3—Insurance

628.305 Overseas workers' compensation and war-hazard insurance.

628.309 Contract clauses for workers' compensation insurance.

628.309-70 DOSAR provisions and clauses.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 628.1—Bonds

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

628.101 Bid guarantees.

628.101-1 Policy on use.

(c) The Procurement Executive is the agency head's designee for the purposes of FAR 28.101-1(c).

628.106-6 Furnishing information.

(c) The head of the contracting activity is the agency head's designee for the purposes of FAR 28.106-6(c).

Subpart 628.2—Sureties

628.203 Acceptability of individual surety.

(g) Evidence of possible criminal or fraudulent activities by an individual

Department of State

628.305

surety shall be referred to the Assistant Inspector General for Investigations.

[59 FR 66763, Dec. 28, 1994, as amended at 69 FR 19336, Apr. 13, 2004]

628.203-7 Exclusion of individual sureties.

The Procurement Executive is the agency head's designee for the purposes of FAR 28.203-7.

[59 FR 66763, Dec. 28, 1994]

Subpart 628.3—Insurance

SOURCE: 71 FR 34840, June 16, 2006, unless otherwise noted.

628.305 Overseas workers' compensation and war-hazard insurance.

(b)(1) Acquisitions for services, including construction but excluding personal services contracts, requiring contractor personnel to perform work outside of the United States, shall include the contractual obligation for coverage under the Defense Base Act (42 U.S.C. Sections 1651-1654, as amended), for covered contractor employees. For the purposes of this section, "covered contractor employees" includes the following individuals:

- (i) United States citizens or residents;
- (ii) Individuals hired in the United States or its possessions, regardless of citizenship; and,
- (iii) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(2) Individuals who are self-employed (*i.e.*, they have not incorporated) do not meet the definition of an employee. No Defense Base Act insurance is required when contracting with these individuals.

(3) Exceptions are discussed in paragraphs (e)(1) and (f) of this section.

(c) The Department of State has entered into a contract with an insurance broker and carrier to provide Defense Base Act insurance (at a fixed rate for services and construction) to cover DOS contracts that require performance overseas by covered contractor employees. Upon award of a contract

that requires Defense Base Act insurance, the contracting officer shall provide the contractor with the name of the insurance broker from which the contractor must acquire the Defense Base Act insurance.

(d) The authority to recommend a waiver from the Defense Base Act, as set forth in FAR 28.305(d), is reserved to the Secretary of State.

(e)(1) The Secretary of Labor has waived the applicability of the Defense Base Act to all DOS service contracts, including construction, for contractor employees who are local nationals or third country nationals. This waiver is conditioned on the requirement for the contractor to provide workers' compensation benefits against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention as prescribed by the local workers' compensation laws.

(2) In cases where a contract is performed in a country where there are no local workers' compensation laws, local and third country national contractor employees are considered to be "covered contractor employees", and the contractor shall acquire Defense Base Act insurance for those employees pursuant to the contract between the Department of State and the Defense Base Act insurance broker.

(f)(1) Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended, provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of State determines are contracts with persons employed to perform work for the Department of State on an intermittent basis for not more than 90 days in a calendar year. The Department of State has established that "persons" includes employees hired by companies under contract with the Department. The Procurement Executive has the authority to issue the waivers for employees who work on an intermittent or short-term basis. Waivers may be issued only for employees who are U.S. citizens and residents, and only where the contractor provides evidence of alternative workers' compensation coverage for those employees. Waivers may not

be issued for local or third country nationals.

(2) The contractor shall submit waiver requests to the contracting officer. The request shall contain the following information:

- (i) Contract number;
- (ii) Name of contractor;
- (iii) Brief description of the services to be provided under the contract and country of performance;
- (iv) Name and position title of individual(s);
- (v) Nationality of individual(s) (must be U.S. citizen or resident);
- (vi) Dates (or timeframe) of performance at the overseas location; and
- (vii) Evidence of alternative workers' compensation coverage for these employees (e.g., evidence that the State workers' compensation program covers workers on short-term foreign assignments).

(3) The contracting officer shall review the request for completeness and accuracy. If the request is complete and accurate, the contracting officer shall forward the request to the Procurement Executive. If the contractor does not provide complete and accurate information, the contracting officer shall return the request to the contractor with an explanation as to what additional information is required.

(4) The Procurement Executive shall review requests for waiver forwarded by the contracting officer and either approve or disapprove the request. The Procurement Executive shall return the request indicating his/her approval or disapproval to the contracting officer. Any request that is not approved shall describe the reason(s) why the request was not approved. The contracting officer shall provide the contractor with the original of the approved or disapproved document and maintain a copy in the contract file.

628.309 Contract clauses for workers' compensation insurance.

628.309-70 DOSAR provisions and clauses.

(a) The contracting officer shall insert the provision at 652.228-70, Defense Base Act—Covered Contractor Employees, in all solicitations for services and construction to be performed outside of the United States.

(b) The contracting officer shall insert the clause at 652.228-71, Workers' Compensation Insurance (Defense Base Act)—Services, in solicitations and contracts for services to be performed outside of the United States when there is a reasonable expectation that offers will include covered contractor employees, as defined in 628.305(b). If the contracting officer is unsure as to whether offers will include covered contractor employees, the contracting officer shall insert the clause. If the contract is for construction, the contracting officer shall insert the clause with its Alternate I.

(c) The contracting officer shall insert the provision at 652.228-74, Defense Base Act Insurance Rates—Limitation, in solicitations for services or construction to be performed outside of the United States when there is a reasonable expectation that offers will include covered contractor employees, as defined in 628.305(b). If the contracting officer is unsure as to whether offers will include covered contractor employees, the contracting officer shall insert the provision.

PART 629—TAXES

Subpart 629.1—General

Sec.

629.101 Resolving tax problems.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.

629.202-70 Exemption from other Federal taxes.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.

629.303 Application of State and local taxes to Government contractors and sub-contractors.

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.

629.401-70 DOSAR contract clause.

629.402 Foreign contracts.

629.402-1 Foreign fixed-price contracts.

629.402-1-70 DOSAR contract clause.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.